

Part-II Study on Dispute Resolution Process in Specific Cases. Chapter V Dispute Resolution Process in Environment Problems

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CHAPTER V

DISPUTE RESOLUTION PROCESS IN ENVIRONMENT PROBLEMS

1. Outline of Environmental Cases

Background of disputes:

The very serious threats posed to environment in the country as a result of rapid population growth and urbanization, expanding infrastructure, industrial pollution, trans-boundary air pollution, water pollution, trans-boundary transport of hazardous waste, unsustainable tourism, depletion of natural resources including over-fishing, desertification and loss of biodiversity, which under current circumstances are exceeding the carrying capacity of the environment, has led to the voluminous litigations pending in all courts of the country. Most of the litigation is pending before the Supreme Court of India to get rid of polluted environment or to make the bureaucracy to pay heed to the problems faced by citizens in the country.

Types of disputes:

The courts are confronted with various types of disputes, which depend upon the types of environment problems that erupt. These may be pertaining to:

- (i) *Urbanization in India*: There is an evident deterioration in physical environment and quality of life in the urban areas aggravated by widening gap between demand and supply of essential services and infrastructure and increasing population pressure on urban centers. The worst sufferers are the poor, whose access to the basic services like drinking water, sanitation, education and basic health services is shrinking. Many disputes are pending on this aspect.¹
- (ii) *Municipal Management*: In the urban areas the municipalities and municipal corporations are made responsible for providing essential services. The services provided by these local bodies, generally, are far from satisfactory. Growing costs, shortage of funds, indiscipline among the

¹ *General Public of Sapruon Valley & others v. State of Himachal Pradesh*, AIR 1993 H.P. 52.

work force, etc. is making the situation worse with the passage of time and has become a cause of litigation.²

(iii) Pollution of rivers by letting out the trade effluents into them.³

(iv) *Conflict between development & conservation*: Large number of development projects are challenged in the courts by environment conscious citizens, which do not maintain balance between development and ecological conservation.⁴

(v) *Solid Waste Management*: Due importance has not been given to the subject of solid waste management in the country. On account of low priority given, the solid waste management practices have continued to remain inefficient and outdated.⁵

(vi) *Sanitary conditions*: The laws governing the urban local bodies make it obligatory to ensure regular cleaning of public streets and disposal of wastes collected there from. In absence of adequate legal provision, even the citizens in general do not organize themselves for the proper storage of wastes at source, for its community collection and for its disposal in to the municipal system.⁶

(vii) Industrial and other commercial activities carried out at residential places, that are injurious to health and physical comfort of residents of the locality, has been subject matter of disputes in good number of cases.⁷

(viii) Air pollution causing substantial injury and special damage has been subject matter of disputes raised both under the specific law dealing with air pollution as well as civil suits filed for permanent injunction.⁸

2. Organizations/Institutions for Dispute Resolution

The following organizations are available at present for environment dispute resolution in India:

1. Courts

² *Municipal Council, Ratlam v. Vardhichand*, AIR 1980 SC 1622; *M.C.Mehta v. Union of India*, AIR 1988 SC 1117; *T. Damodar Rao v. S.O. Municipal Corporation, Hyderabad*, AIR 1987 A.P. 171.

³ *M.C.Mehta v. Union of India* AIR 1988 SC 1037

⁴ *Rural Litigation & Entitlement Kendra v. State of U.P.* AIR 1985 SC 652; *Kinkari Devi v. State of H.P.* AIR 1988 H.P. 4.

⁵ *Good Urban Governance Campaign*, 4-6 September, 2001, New Delhi, UNCHS Press Release, See http://pib.nic.in/urban_governance/release04.html

⁶ *Municipal Council, Ratlam v. Vardhichand*, AIR 1980 SC 1622

⁷ *Krishna Gopal v. State of M.P.*, 1986 Cr. L.J. 396; *Smt. Ajeet Mehta v. State of Rajasthan*, 1990 Cr. L. J. 1596

⁸ *Ram Baj Singh v. Babulal*, AIR 1982 All. 285.

2. Administrative bodies
3. Tribunals
4. National environment appellate authority
5. Mediation –conciliation
6. NGOs and other institutions

1. Courts

(i) *Courts of subordinate judge* can be approached for the grant of permanent injunction and compensation in cases of:

- unauthorized industries located in residential areas discharging harmful gases and hazardous effluents in the immediate neighbourhood;
- environmental degradation due to mismanagement of civic amenities like location of waste dump, water logging, etc;
- commercial establishments operating illegally in the residential buildings causing nuisance to people living in the immediate vicinity.⁹

(ii) *Courts of Sub –Divisional Magistrate or District Magistrate* on receiving a police report or other information and on taking such evidence as is necessary, can restrain polluter or pass any order directing the authority to do what is necessary in given circumstances of the case, by making conditional order to that effect.¹⁰

(iii) *Environment Courts*: Special courts or environmental courts are constituted at state level, preferably only to try cases arising under the special laws on environment, namely, the Water (Prevention & Control of Pollution) Act, 1974; the Water (Prevention and Control of Pollution) Cess Act, 1977; the Air (Prevention and Control of Pollution) and the Environment (Protection) Act, 1986. Two special Environment Courts have been established in Haryana State i.e., one at Faridabad and other at Hissar for the expeditious disposal of court cases. In Uttar Pradesh, special court for the speedy trial of the pollution cases has been established.¹¹

(iv) *High courts*: These may be approached by way of appeal from the orders of above mentioned courts or directly under Article 226 of the Constitution for protection of statutory or

⁹ Civil Procedure Code, 1908, sections 16, 17, 20.

¹⁰ Criminal Procedure Code, 1898, section 133(1).

¹¹ Government of India, Ministry of Environment & Forests, *Pending Pollution Related Cases in Gujarat Courts*, Rajya Sabha Unstarred Question No 1133, 28.11.1997, <http://164.100.24.219/rsq/quest.asp?qref=8610>

common law rights, praying for issuing writs against administrative machinery of the state, which has failed in its duty imposed on it by various environment regulations. Besides writ petition, high courts are approached by way of public interest litigation (here-in-after referred as PIL). PIL can be filed in the high court on behalf of person / group / class thereof, who on account of poverty, ignorance of law, or any other disability, cannot bring an action in the court for the harm caused to them or their environment. In some states, 'Green Benches' have been created in the high courts to dispose off environmental cases expeditiously.¹²

(v) *The Supreme Court of India* is often approached for resolving environment disputes involving huge human and financial interests either as a court of final appeal from the orders of the high courts or directly under Article 32 of the Constitution under writ jurisdiction of the Court or by way of PIL.

2. Administrative bodies

(i) *Public Grievances Cell*: Grievance Cell was constituted in October 1991, by the Ministry of Environment & Forests to attend the complaints of public regarding environmental problems. Joint Secretary (Administration) (JS) has been nominated as Public Grievance Officer of this Ministry.¹³ The general public can meet the above Public Grievances Officer on every Wednesday from 10:00 A.M. to 1.00 P.M. and put forward their complaints.

During 1999-2000, 169 complaints were received from the general public. Majority of these complaints / grievances related to pollution control.¹⁴

(ii) *Central Pollution Control Board (CPCB), State Pollution Control Boards (SPCB) & Pollution Control Committees (PCC)*: Environment legislation particularly those like the Water or Air Acts of early 1970s and 1980s have provided for an elaborate administrative machinery to deal with matter pertaining to environmental pollution. These being CPCB, SPCB and Pollution control committees (PCC). In exercise of powers under Sections 4 and 6 of the Water Act and Air Act respectively, the CPCB has delegated all powers of the board to all the PCC constituted for union territories. These are responsible for taking legal action against polluting units in their respective states under the Water and Air Acts. The CPCB, SPCBs and PCCs are responsible for implementing the legislations relating to prevention and control of pollution; they also develop

¹² *Evolution of Pollution Control Mechanism in India*, Para 1.1.7, Chapter 1, <http://planningcommission.nic.in/spcbchap1.pdf>

¹³ Government of India, Ministry of Environment & Forests, Annual Report, 1999-2000; <http://envfor.nic.in/report/9900/chap11.html>

¹⁴ *Ibid.*

rules and regulations, which describe the standards for emissions and effluents of air and water pollutants and noise levels. The CPCB advises the Central Government on all matters concerning the prevention and control of air, water and noise pollution and provides technical services to the Ministry of Environment & Forests for implementing the provisions of the Environment (Protection) Act, 1986.¹⁵ At present there are 25 SPCBs set up in the country.¹⁶

3. National Tribunals

To lessen the burden of environment litigation on the regular courts, the Parliament enacted the National Environment Tribunal Act, 1995. This Act provides for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising out of accidents caused due to handling of hazardous substances, with a view to give relief and compensation to victims for damage to person, property and the environment and for matters connected therewith or incidental thereto. The Central Government is authorized to set-up the tribunal and its benches at different places, when it feels appropriate. However, till date, not a single tribunal has so far been set-up. Till these environment tribunals come to exist, mechanisms and procedures for the adjudication of environment disputes related to hazardous substances and hazardous processes will remain unsatisfactory, due to inadequacy or insufficiency of the fora available for consideration of these matters.

4. National Environment Appellate Authority

The National Environment Appellate Authority was constituted under the National Environment Appellate Authority Act, 1997.¹⁷ It hears appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, are in operations and for matters connected therewith or incidental thereto. Section 11(1) of the Act provides that any person aggrieved by an order granting “environmental clearance” in the areas in which industries, operations or processors shall not be carried out or shall be carried out subject to certain safeguards, may within 30 days appeal to the Authority mentioned above.

5. Mediation – conciliation

There is no statutory provision for mediation/ conciliation for environmental disputes. There are, however, certain initiatives taken outside the formal systems. For example, the Council of State

¹⁵ David Shaman, World Bank Study, *India's Pollution Regulatory Structure and Background*, 1996, <http://www.worldbank.org/nipr/india/india-back.htm#1>

¹⁶ *Evolution of Pollution Control Mechanism in India*, Preface, <http://planningcommission.nic.in/spcbchap1.pdf>

¹⁷ The Act received presidential assent on 26th March 1997. It came into force from 9.4.1997.

Governments (CSG) of the US, in collaboration with the US-AEP (US Asia Environment Partnership), a public-private initiative, has launched a court-annexed mediation-conciliation programme in Chennai (Tamil Nadu), under the aegis of the Madras High Court, to help resolve pending environment cases. The CSG, which represented all the 50 States of the US, has evolved the ADR programme to counter the limitations of the traditional methods of dispute resolution, which rely heavily on the confrontational format. ADR methods, through use of a neutral third party, as an adjunct to the court process, are ideally suited for environment disputes.

Under the project, a CSG team of experts will be working closely with the Green-Bench set-up by the Madras High Court for resolving environment-related disputes through the process of mediation-conciliation. A comprehensive programme is being developed for the High Court, under which CSG would be training a core team of mediators for the Green Bench cases. The programme is intended to correct the lack of technical understanding of the procedure of mediation – conciliation, while dealing with environmental disputes. Once the mediation proceedings reach an effective stage, the Bench would be able to write out an order, which may be construed as the verdict of the High Court.¹⁸

Besides above arrangement, the Environment Board is constituted by the Chief Justice of the Madras High Court comprising of one judge, counsel for the Tamil Nadu Pollution Control Board, a city NGO, a High Court lawyer and Registrar of the High Court. The Board will use the experience that National Institute of Conciliation Machinery (NICM) has had in the area of ADR and develop a mechanism that can help sort out many of the environmental disputes and prevent them from coming to the Green Bench and clogging the judicial system. The system aims at bringing all the stakeholders to the discussion table to sort out their differences without taking the matter to the courts. The project, which would last around two years, has a cost outlay of \$354,000. The Indian partner for the project is the Industrial Consultancy of Tamil Nadu (ITCOT). The two workshops on ADR were held during the early months of this year, which led to the crystallization of the concept for setting up the Board for the Green Bench. After having covered thrust areas for environment protection in the textile and tannery industry, it has started work on the distilleries and foundries.¹⁹ If this experience succeeds, it can be introduced in other states.

¹⁸ Business Line, Financial Daily from THE HINDU group of publications, Friday, August 10, 2001

¹⁹ *Green Bench gets down to business*, Business Line, Saturday, June 23, 2001

However, the response and attitude of the parties to the above mode of resolving dispute is not enthusiastic. As on May 31, 2001, as many as 217 cases were pending before the High Court, and none of the parties to the dispute was willing to volunteer for mediation-conciliation proceedings.

6. Role-played by NGOs, legal aid associations, lawyers

The role of NGOs has become another dimension in the evolution of public activism in environment litigation / resolution of disputes. In the early 1960's only a handful NGOs existed. By 1983 about 250 environmental NGO's had registered with the government. Their numbers and influence continue to grow into the 1990's.²⁰

Besides, NGOs, there are institutions affiliated to WWF - India²¹ who are very active in the area of environment. These support financially legal interventions in judicial cases for nature conservation and environmental protection. For example, Centre for Environment Law, file cases in the court in the form of PIL, after it has failed to persuade the concerned industries or the Government to stop violation of operative laws.²² Then there are people like M.C. Mehta. Mehta has won additional precedent-setting suits against industries which generate hazardous waste and succeeded in obtaining a court order to make lead-free gasoline available. He has also been working to ban intensive shrimp farming and other damaging activities along India's 7,000-kilometer coast. He has succeeded in getting new environmental policies initiated and has brought environmental protection into India's constitutional framework. He has almost single handedly obtained about 40 landmark judgements and numerous orders from the Supreme Court against polluters, a record that may be unequaled by any other environmental lawyer in the world.²³

The Delhi Legal Aid & Active Board and the Delhi Bar Association too are active in initiating court actions against government inaction on the threats posed to the environment.²⁴

Belinda Wright, also a lawyer at *Tis Hazari*²⁵ is very active in fighting poaching of endangered species. She runs Wildlife Protection Society and litigates on behalf of animal lovers throughout the country.²⁶

²⁰ *Supra* note 15.

²¹ World Wildlife Fund

²² <http://www.wwfindia.org/programs/envlaw/liti.jsp?prm=29>

²³ <http://www.goldmanprize.org/recipients/recipientProfile.cfm?recipientID=34>

²⁴ *M.C. Mehta v. Union of India* AIR 1987 SC 1086: In this case Board and association filed applications for award of compensation to persons who suffered harm on account of escape of oleum gas from the factory of Sriram Food & Fertilizers Ltd. – a private enterprise.

3. Fact Finding regarding the Organizations/Institutions

(a) Statutory bases

India has had a long history of environmental laws with the passage and codification of acts such as the Indian Penal Code, the Criminal Procedure Code, the Bengal Smoke Nuisance Act of 1905, the Indian Motor Vehicle Act, the Factories Act, the Indian Forest Act, the Mines and Minerals (Regulation and Development) Act, the Industries (Development and Regulation) Act, the Forest (Conservation) Act, the Merchant Shipping Act, etc.

The Indian Penal Code, passed in 1860, penalizes person(s) responsible for causing defilement of water of a public spring or reservoir with imprisonment or fines.²⁷ However, punishment and fines imposed under this Code may be characterized as meager. In addition, fouling a "public spring" has not, by definition, included a "public river", which is where most pollution occurs. Finally, the specific language of the code places the burden of proof on the prosecution. Prosecution has to establish *mens rea* on the part of polluter,²⁸ making successful prosecution problematic in a court of law.²⁹

The Indian Forest Act, 1927 was a product of British rule. The legislation granted the government uncontested rights over natural resources, with state governments authorized to grant licenses to contractors and oversee protection of the forests. Even at this early stage, awareness of man's destructive tendencies was emerging.³⁰

The Factories Act, 1948 also addressed public safety and health issues. Section 7-A gives general duties of the occupier in respect of health and safety of the workers. Section 7-B imposes similar duties on manufacturer with regards to manufacturing of articles and process. Section 31 of the Act delineates about the atmospheric pressure at which any plant can be operated inside the factory. Sections 41-A to 41-H, give provisions relating to handling of hazardous processes in the factory.

²⁵ District court at Delhi.

²⁶ **TIME**, September 20, 1999 Vol. 154, No. 11.

²⁷ Indian Penal Code, 1860, section 277.

²⁸ *Polluters must "voluntarily", "with intent", or "knowingly" discharge damaging effluents.*

²⁹ Bharat Desai, "Water Pollution in India, Law and Enforcement", *Environmental Laws of India* (1994, South Asia Books), p. 45.

³⁰ Renu Khator, *Environment, Development and Politics in India*, (1991, University Press of America, ISBN: 0819181897), p. 53

The watershed event in the environmental movement in India, was the **Stockholm Conference on Human Environment** in June, 1972. Stockholm served as the genesis for the series of environmental measures India took in the years to come. It has also been suggested that international events such as Stockholm provided the cover to the Indian officials needed to implement national environment policy without the vitriolic backlash normally expected from industry.³¹ Soon thereafter, event after event strengthened environment movement in the country got strengthened. The Constitution of India was amended to give due place to environment and Articles 48A, 51A(g) and 243G were added.³² As a result, the language of the Directive Principles of State Policy requires not only a protectionist stance by the state but also compels the state to seek the improvement of polluted environments.³³ This allows the government to impose restrictions on potentially harmful entities such as polluting industries.³⁴

Enactment of **Water (Prevention & Control of Pollution) Act, 1974**, marked the true commitment of India to environment movement. In environmental matters, the Constitution of India provides for a distribution of legislative powers between the Union and the States. In the case of "water", Constitution empowers the state legislature to enact laws. However, the Central Government can be empowered by the state legislatures to pass water-related legislation.³⁵ The legislation established both a Central Pollution Control Board, and the State Pollution Control Boards. Some of the main responsibilities of the Central Board, include: coordinating activities of state boards and resolving disputes among them; providing technical assistance; conducting investigations; opening laboratories for analysis of samples; establishing fees for different types of sample testing; researching issues and problems; training personnel; conducting media and public awareness campaigns; collecting and disseminating data on water pollution; and working with state boards to set standards for stream or well.³⁶

The state boards have similar responsibilities under the Water Act. They play an important subsidiary role of doing plant-level inspections and monitoring, and advising the Central Board

³¹ *Supra* note 15.

³² 42nd Amendment to the Constitution of India, in 1976.

³³ Constitution of India, Article 47.

³⁴ *Supra* note 29.

³⁵ Constitution of India, Article 252

³⁶ The language of the bill specifically mentions "streams and wells" as the Central Board's area of oversight. With regard to other bodies of water, such as rivers, lakes and oceans, the legislation is silent. With this in mind, its authors do appear to imply that the Central Board may play a role with the state boards in setting standards for specific, or individual, streams or wells.

of the problems and trends at the local level. In situations where a state board believes immediate action is necessary, it has the authority to prevent further discharges, and can also apply to a Judicial Magistrate for a restraining order. In the case of an emergency, state boards are empowered to take whatever measures they deem necessary. The legislation also sets out specific penalties (prison sentences and fines) for violations of the Act. As an additional deterrent, if a person convicted of an offense under this Act commits a similar offense afterwards, the court can have the offender's name, violation and penalties published in newspapers, with the expense of the publication recoverable as a fine.

The Water (Prevention and Control of Pollution) Rules of 1975, delineates the terms and conditions of service for members of the Central Board.

Water (Prevention & Control of Pollution) Cess Act, 1977 provides the Central and state boards with the authority to levy and collect a tax on industries using water. It covers all the states except the State of Jammu & Kashmir. The tax is calculated on the basis of how much water is being consumed.

The Air (Prevention & Control of Pollution) Act, 1981 is another important legislation, which designated the Central Board and state boards, which governed water pollution and empowered with the same authority and administrative functions as under the Water Act. In addition, the Central Board sets permissible air standards and the state boards have the power to petition local magistrates to restrain polluters from exceeding specified standards.

In 1986, following Bhopal tragedy, Parliament was motivated to address all environmental pollutants. In about six months, with only casual resistance from powerful industry and business interests, the government enacted the **Environment (Protection) Act**. Under this Act, the Central Government has a responsibility for deciding standards, restricting industrial sites, laying down procedures and safeguards for accident prevention and handling of hazardous waste, oversight of investigations and research on pollution issues, on-site inspections, establishment of laboratories, and collection and dissemination of information. Samples collected by Central Government officials are admissible in court. This Act, made public hearings, as pre-requisite for project clearance. The measure also delineates a system where a manufactured product can receive certification as environmentally friendly or compatible.

The rules on hazardous waste management and their handling have also been laid down.³⁷ The Act defines the responsibilities of handlers, circumstances for granting authorization, conditions of disposal sites, rules for importing hazardous wastes, reporting of accidents, packaging and labeling requirements and an appeal process for potential handlers who have been denied authorization. This legislation had another interesting component. For the first time, private citizens were given the right to file cases against non-complying factories. A private citizen may file a complaint, however, only after giving notice of at least 60 days to the concerned authority of his/her intentions to file.

In 1991, the **Public Liability Insurance Act** was enacted, which provided public liability insurance for persons injured by accidents caused by hazardous materials. The measure mandates that business owners operating with hazardous waste take out insurance policies. An *Environmental Relief Fund* has also been established under the Act to provide relief to victims of the accidents caused by hazardous material and processes.

The landmark legislations, mentioned above, are not the only remedies. **Criminal Procedure Code**, too vests powers in the Magistracy for removal of a "public nuisance".³⁸

During the intervening years, other laws have been passed to address specific issues, including the Wild Life Protection Act, 1972 and the Atomic Energy Act, 1962.

(b) Running cost

In the aftermath of the Water Act and constitutional amendment,³⁹ the government moved to enact a series of environmental measures. The Department of Environment was created in 1980, in the Government, to essentially serve as an advisory body with few enforcement powers. In 1985, the Ministry of Environment and Forests (MoEF) was created. It had 18 new divisions, including the Division of Pollution Control. By 1989, it had 1,171 personnel and is still expanding.⁴⁰ Its budget changed radically as well. In 1982-83, the agency had a total budget of Rs. 138.643 million, with Rs. 21.5 million designated for the Pollution Control Division. Its funding covered the Central Board's expenses, cess reimbursements to the state boards, the budget for the Clean Ganga Project, laboratories and other pollution control schemes. By 1988-

³⁷ Hazardous Wastes (Management and Handling) Rules, 1989; The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989; Hazardous Wastes (Management & Handling) Amendment Rules 2000.

³⁸ Criminal Procedure Code, sections 133 and 144.

³⁹ *Supra* note 32.

⁴⁰ *Supra* note 15.

89, the overall budget stood at Rs. 18.2 million. And by 1984-85, the pollution control budget had jumped to Rs. 169 million, more than Rs. 30 million more than the entire budget for the agency two years earlier.⁴¹

The Central Pollution Control Board: Funding from the central government has increased steadily since the Board's inception in 1977. By 1987, its budget had increased more than ten-fold from its original allocation of Rs. 2 million to Rs. 21.2 million. Administrative expenses accounted for Rs. 5.63 million in 1987-88. Litigation costs rose from Rs. 30,000 in 1984-85 to Rs. 89,000 in 1987-88.⁴²

State Pollution Control Boards: The primary source of funding for the state boards is from the Central Board and state government.⁴³ Under the Water Cess Act any fees levied by a state board are sent to the central government in the Consolidated Fund of India. The central government reimburses the funds to the state government, which is expected to pass it back to the state board. While state boards, collectively, have increased revenues through the water cess, from Rs. 30.59 million in 1983-84 to Rs. 54.49 million in 1986-87, there have been numerous complaints of state governments failing to adequately return those revenues back to the boards. The resulting effect on enforcement and monitoring has been noticeable.⁴⁴

The Gujarat Pollution Control Board: The GPCB started in October 1974 with a staff of 25. By 1994, the board had 349 personnel, of which 39 were engineers and 78 were scientists and analysts, a headquarters, three regional offices, two sub-regional offices, and a laboratory at each facility.⁴⁵

The board's annual income in 1993-94, including grants, was Rs. 37 million. Its expenditures were Rs. 28 million. The state government provided Rs. 14.5 million. Cess collection improved dramatically, rising from Rs. 6 million in 1991-92 to Rs. 13 million in 1993-94. Total arrears in cess collection through March, 1994 was Rs. 47 million. Most of this was due from Municipal Corporations and local bodies.⁴⁶

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Anil Agarwal, Ravi Chopra and Kalpana Sharma, The State of India's Environment, 1982: A Citizen's Report, Centre for Science and Environment, 17(1982).

⁴⁴ Central Pollution Control Board, Sixty First Report, New Delhi, 1988

⁴⁵ Gujarat Pollution Control Board, Annual Report, 1993-94

⁴⁶ World Bank, ASTEN, Water Vergara, Back To Office Report, India Industrial Pollution Control and Industrial Pollution Prevention Projects, September, 1994

The Maharashtra Pollution Control Board: In 1970, the MPCB became the first state pollution control board in India to begin operating. By 1993, the MPCB had a staff of 445. There were 167 inspectors, 51 analytical staffers, and 227 administrative personnel. The collection of the water cess had increased from Rs. 21 million in 1991-92 to Rs. 56 million in 1993-94. Similar consent and other fees increased from Rs. 7 million to Rs. 17.5 million during the same time span. Outlay for capital expenditures through 1998-99 were at Rs. 5.5 million for applied research, Rs. 10 million for a Pollution Control Action Plan, and Rs. 39.5 million for a training center. Annual projected costs for the ongoing research, action plan, and training center are estimated at Rs. 10 million. With adjustments for pay raises and pension increases, total board expenditures went from Rs. 40 million in 1994-95 to Rs. 59 million by 1998-99.⁴⁷

The Tamil Nadu Pollution Control Board: The TNPCB started operations in 1982 with 17 people. By 1994, it had a staff of 638, of which 147 were technical and 73 were scientific personnel. The board has five regional offices, 16 district offices, three advanced labs to analyze effluents, ambient air quality and stack emissions surveys, another three district labs to conduct pollutant analysis, and six mobile labs. The board is financially self-sufficient. Between 1989 and 1994, 60% to 70% of the board's revenues came from consent fees, 10% to 15% from analysis fees and the final 10% to 15% from water cess reimbursements. In 1990-91, total expenditures were Rs. 43.22 million. By 1993-94, they were projected to be Rs. 130.396 million.⁴⁸

The Uttar Pradesh Pollution Control Board: The UPPCB has 450 personnel, of which 85 are inspectors and 43 are analytical staff. The regional labs, at a cost of Rs. 28 million for land acquisition and construction, were completed in late 1994. The board is almost entirely self-sufficient, raising almost 90% of its revenues through water cess reimbursements and consent fees.⁴⁹

The West Bengal Pollution Control Board : The WBPCB, with headquarters in Calcutta, began operations in September, 1974. Like all the boards, the WBPCB's costs have risen significantly since the late 1980's. In 1987-88, the board received Rs. 4,582,656 in central and state government funding, along with fees derived from consents and certifications. By 1994-95, the

⁴⁷ *Supra* note 15.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

total was Rs. 14.646 million. Expenditures followed a similar pattern. In 1987-88, expenditures, including salaries and rents, were Rs. 3.818 million.⁵⁰

Under the scheme of *Assistance for Abatement of Pollution*, the Central Government provides financial assistance to the SPCBs and to the State/UT Departments of Environment for procurement of scientific equipment and for specific studies and projects that are required to be completed within a specific time frame to meet the objectives of the Policy Statement for Abatement of Pollution. An amount of Rs. 8 millions has been provided to the SPCBs and the State Departments of Environment under this scheme in 1998.⁵¹

(c) Status

As the status of civil and criminal courts is elucidated in Chapter –1 “The Court System In India”, here the inquiry will be related to status of administrative authorities, tribunals and the appellate authority constituted to resolve environment disputes.

However, it is noteworthy to mention the judgement of the Supreme Court of India in *Ratlam Municipality v. Vardhichand*⁵² wherein it laid down that the nature of judicial process adopted by trial courts in environment related matters is not purely adjudicatory nor is it functionally- that of an umpire only. The magistrate, if need arises, should take affirmative action to make the remedy effective.

Pollution control boards:

The CPCB is a body corporate with all requisites of legal person.⁵³ It is established in Delhi. It has the power to acquire, hold and dispose of property and to contract, and may, by the aforesaid name, sue or be sued.

SPCBs are set up by state governments under a notification to exercise powers and perform functions assigned under the Act.⁵⁴ Every State Board is also a body corporate which can sue or be sued.⁵⁵

The most obvious tool available to the pollution control boards is to apply to the Judicial Magistrate to restrain or prevent facilities from continuing to violate existing pollution laws.

⁵⁰ West Bengal Pollution Control Board, *Annual Report, 1994-95*

⁵¹ MoEF Annual Report, 1997-98, See <http://envfor.nic.in/report/9798/legis.html>

⁵² AIR 1980 SC 1622

⁵³ Water (Prevention and Control of Pollution) Act, 1974. Section 3(3)

⁵⁴ *Id.*, Section 4(1)

⁵⁵ *Id.*, Section 4(3)

Should the court agree with the board that an enterprise / factory's activities are in violation of the law and issue a restraining order to prevent further violations, it is quite possible the enterprise / factory could no longer continue to function and would have to close. One of the chief criticisms of the Water Act was its prohibition on the public to initiate litigation against polluters. As a result, individual state boards are simply overburdened.⁵⁶

The tenure of a Member of Board, other than a member secretary, is for three years, which on expiration of term can continue until the successor enters upon office.⁵⁷ Essentially all these authorities who are appointed or nominated in CPCB/ SPCBs / PCC, are government officials. There is no direct involvement of people or environmental group or activities in any of the authorities constituted. Scope for active participation of citizens in effective implementation of the measures under the respective enactments of pollution control ought to be devised and encouraged.

(d) Persons in charge of resolution (qualification, requirement of legal education/ knowledge and appointment)

The following are the qualifications of the persons in charge of resolution of disputes outside the purview of the courts.

(i) Composition of CPCB

The Central Board consists of the following members, namely:-

- (a) a full-time chairman, being a person having special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by the Central Government;
- (b) such number of officials, not exceeding five to be nominated by the Central Government to represent that Government;
- (c) such number of persons, not exceeding five to be nominated by the Central Government, from amongst the members of the State Boards;
- (d) such number of non-officials, not exceeding three] to be nominated by the Central Government, to represent the interests of agriculture, fishery or industry or trade or any other interest which, in the opinion of the Central Government, ought to be represented;

⁵⁶ *Supra* note 15.

⁵⁷ Water (Prevention and Control of Pollution) Act, 1974, Section 5(1)

- (e) two persons to represent the companies or corporations owned, controlled or managed by the Central Government, to be nominated by that Government;
- (f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the Central Government.⁵⁸

(ii) Composition of SPCB

A state board consists of:

- (a) a chairman, being a person having special knowledge or practical experience in respect of matters relating to environmental protection] or a person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by the state government.
- (b) such number of officials, not exceeding five, to be nominated by the state government to represent that government;
- (c) such number of persons, not exceeding five to be nominated by the state government from amongst the members of the local authorities functioning within the state;
- (d) such number of non-officials, not exceeding three to be nominated by the state government to represent the interest of agriculture, fishery or industry or trade or any other interest which, in the opinion of the state government, ought to be represented;
- (e) two persons to represent the companies or corporations owned, controlled or managed by the state government, to be nominated by that government;
- (f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the state government.⁵⁹

Disqualifications for CPCB / SPCBs: No person shall be a member of a Board, who-

- (a) is, or at any time has been adjudged insolvent or has suspended payment of his debts or has compounded with his creditors, or
- (b) is of unsound mind and stands so declared by a competent court, or
- (c) is, or has been, convicted of an offence which, in the opinion of the Central Government or, as the case may be, of the State Government, involves moral turpitude, or

⁵⁸ *Id.*, section 3(2).

⁵⁹ *Id.*, section 4(2).

(d) is, or at any time has been, convicted of an offence under this Act, or

(e) has directly or indirectly by himself or by any partner, any share or interest in any firm or company carrying on the business of manufacture, sale or hire of machinery, plant, equipment, apparatus or fittings for the treatment of sewage or trade effluents, or

(f) is a director or a secretary, manager or other salaried officer or employee of any company or firm having any contract with the Board, or with the Government constituting the Board, or with a local authority in the State, or with a company or corporation owned, controlled or managed by the Government, for the carrying out of sewerage schemes or for the installation of plants for the treatment of sewage or trade effluents, or

(g) has so abused, in the opinion of the Central Government or as the case may be, of the State Government, his position as a member, as to render his continuance on the Board detrimental to the interest of the general public.⁶⁰

(iii) Pollution Control Committee

The Committee consists of an official at the level of the Secretary and such officials as may have concerned with the problems of environment. There has been variations in the office of the chairman. It is the Secretary, Ministry of Environment & Forests as Chairman in Delhi and Pondicherry while in Chandigarh the Finance Secretary is a Chairman. In Daman Diu & Nagar Haveli, and Lakshwadweep Committee has got the collector-cum-development commissioner as chairman. By and large the composition of committees consist of senior government officers.⁶¹

(iv) National environment appellate authority

The Authority consists of a Chairperson, a Vice-Chairperson and such other members not exceeding 3, as the central government appoints.⁶²

A person is not qualified for appointment as a Chairperson unless he has been a Judge of the Supreme Court or the Chief Justice of a high court.⁶³

A person is not appointed as a Vice-Chairperson unless he has-

(a) for at least two years held the post of a Secretary to the Government of India or any other post under the Central or State Government carrying a scale of pay which is not less than that of a Secretary to the Government of India; and

⁶⁰ *Id.*, section 6.

⁶¹ *Id.*, section 9.

⁶² The National Environment Appellate Authority Act, 1997, section 4.

⁶³ *Id.*, section 5(1).

(b) expertise or experience in administrative, legal, managerial or technical aspects of problems relating to environment.⁶⁴

A person is not appointed as a member unless he has professional knowledge or practical experience in the areas pertaining to conservation, environmental management, law or planning and development.⁶⁵

Thus, it is evident that apart from the National Environment Appellate Authority, most of the administrative bodies (example, CPCB, SPCB, PCC) monitoring environment matters consist of officials and legal education for them is not necessary. However, if the case goes to the court, the presiding officer with the legal background will adjudicate the matter.

(e) Substantive rules applicable to dispute resolution

At present there are 8 Central Acts, 18 sets of Rules and 31 notifications in force to regulate environment related problems in the country.⁶⁶ This voluminous amount of legislation reflects a strong legislative urge to control pollution and create balance in the ecological system.

Besides, English cases form authority for decided cases in many litigations before the Supreme Court of India. They are often referred to in granting relief. For example, *Ryland v. Fletcher*⁶⁷ was discussed at length in *M. C. Mehta v. Union of India*.⁶⁸

In *M. C. Mehta v. Union of India*,⁶⁹ the Supreme Court relying on an English case, *Pride of Derby v. British Celanese Ltd.*,⁷⁰ to grant remedy to petitioner who was not a riparian owner.

The Supreme Court of India, in environment related cases, has established trend of appointing committees consisting of experts to get critical, analytical and independent opinion on technical matters. For instance, in *Rural Litigation & Entitlement Kendra, Dehradun & Ors. v. State of U.P.*⁷¹ the Supreme Court while making final order relied on the report of *Bhargav Committee*, appointed by it by an order dated 11. 8. 1983, for inspecting conditions of lime stone quarries at Dehradun.

⁶⁴ *Id.*, section 5(2).

⁶⁵ *Id.*, section 5(3).

⁶⁶ INDIAN ENVIRONMENTAL LEGISLATIONS, See <http://envfor.delhi.nic.in/>

⁶⁷ 1868 (19) LT 220

⁶⁸ AIR 1987 SC 1086.

⁶⁹ AIR 1988 SC 1117

⁷⁰ (1953) Ch. 149

⁷¹ AIR 1985 SC 652

In *Research Foundation for Science Technology and Natural Resource Policy v. UOI*,⁷² the Supreme Court, constituted a high powered committee under the Chairmanship of Prof. M.G.K. Menon to oversee the strict and faithful implementation of relevant rules and regulations on management of hazardous wastes. The final report (in 3 volumes) was submitted on 25-1-2001.

The Supreme Court has set up *Bhure Lal Committee* (an expert committee constituted under the environment protection law) to examine the existing standards for CNG vehicles including conversion to CNG fuel mode and for CNG refilling stations in Delhi and asked it to submit a report.⁷³

(f) Proceedings

Proceedings under the Code of Criminal Procedure, 1973

Section 133 to 144 of the Code of Criminal Procedure of 1973, provide independent, speedy and summary remedy against public nuisance. Section 133 empowers a magistrate to pass a “conditional order” for the removal of a public nuisance within a fixed period of time. The magistrate may act on information received from a police report or any other source including a complaint made by a citizen. The magistrate's power to issue a conditional order under Section 133 is now been interpreted to be of mandatory nature. Once a magistrate has before him evidence of a public nuisance, he must order removal of the nuisance within a fixed time. The party directed to remove nuisance either has to comply with the order or show cause against it. An enquiry may be initiated and to assist the inquiry, the magistrate may direct a local investigation to ascertain facts or summon expert witnesses. The court may also issue an injunction pending an enquiry. Failure to comply with the order is punishable under section 188 of the Indian Penal Code. The court may even carry out the order and recover costs from a defaulter with power to prohibit repetition or continuance of a public nuisance.

Civil proceedings

A common law tort action against the polluter is one of the major and among the oldest of the legal remedies to abate pollution. Most pollution cases in tort law fall under the categories of nuisance, negligence and strict liability. Section 91 of the Code of Civil Procedure, 1908 provides the procedure for removal of nuisance. Accordingly, either the Advocate –General or

⁷² Public Interest Litigation W.P. No. 657/95

⁷³ SC direction to examine CNG stand, 5.4.2001, the Hindu, p. 3

2 or more persons, with the permission of the court, even though no special damage has been caused to them, can file a suit for a declaration and the injunction or for such other relief as may be appropriate in the circumstances of the case.

A plaintiff in a tort action sues for damages or an injunction or both. An injunction order can either be *temporary* or *perpetual*. Temporary injunction maintains the state of things at a given date and is regulated by Sections 94 and 95 as well as Order 39 of the Code of Civil Procedure of 1908. Three well established principles govern the injunctive process. These are- the existence of a *prima facie* case, the likelihood of irreparable injury that cannot be adequately compensated for in damages; and that the balance of convenience requires the issue of the injunction. Whereas perpetual injunctions are regulated by Sections 37 to 42 of the Specific Relief Act, 1963. A perpetual injunction permanently restrains the defendant from doing the act complained of. It is granted at the court's discretion after judging the merits of the suit. A perpetual injunction is intended to protect the plaintiff indefinitely to put into check successive actions in respect of every infringement and avoid multiplicity of proceedings.

Citizens Suit Provision under Environment Protection Act, Water and Air Acts

Before the enactment of the Environment Protection Act, the power to prosecute under Indian Environment laws belonged exclusively to the government. Section 19 of the Environment Protection Act 1986 allows citizen to prosecute an offender before a magistrate. Prior to complaining, however, he or she must give the government 60 days notice of his or her intention to complain. This notice is intended to alert the government to the offence so that it may itself take appropriate remedial action. Likewise, the citizen participation in the enforcement of pollution laws are now found in Section 43 of the Air Act as amended in 1987 and in Section 49 of the Water Act as amended in 1988.

Proceedings Under the Public Liability Insurance Act, 1991

With the increase in number of hazardous industries and accidents, the Parliament enacted the Public Liability Insurance Act in 1991. The Act has provided for 'compulsory insurance' and the formation of an 'Environment Relief Fund.' The collector is empowered to grant compensation on the basis of 'no fault liability'. The claimant need not establish that 'death', 'injury' or

‘damage’ having the jurisdiction over the area in which the accident occurs.⁷⁴ The collector has to follow such summary procedure for conduct in an enquiry on an application for relief under the Act as he thinks fit.⁷⁵ Under rule 5(2) of Public Liability of Insurance Rules the collector shall have all the powers of a civil court for purposes of summoning and enforcing the attendance of any person and examining him on oath, and requiring the discovery and production of documents besides receiving evidence on affidavits. Subject to the provisions of Section 123 and 124 of the Indian Evidence Act 1872, requisitioning any public record or documents or copy of such record or document from any office is within his powers. He can also issue commissions for the examination of witness or documents and he has inherent powers of a civil court as saved under section 151 of the Civil Procedure Code, 1908. An appeal against the award of the collector has not been provided for. If a victim feels he is entitled to larger compensation, he is free to initiate action in time in a proper forum. In any case, rank injustice can always be rectified within, the writ jurisdiction of the high court. Under the Public Liability Insurance Act, 1991, the owner, having control over the affairs of handling, has to pay specified amount of money to victims by way of interim relief for which an insurance policy is taken.⁷⁶ For implementation of this Act a number of agencies have been assigned definite roles. The major role is of the Collector. The collector on having received notice of accident acts to provide relief to victims. Applications in prescribed forms accompanied by supporting documents are called and the Collector may follow summary procedure for giving relief. He is under an obligation to maintain an application register and awards and payments made there under. An enquiry is held after hearing parties for payment of sum awarded as relief. The Collector is responsible for disbursement of the funds to be drawn upon the Insurance Companies or the Emergency Relief Fund.

Writ Petitions

The extra ordinary jurisdiction under Articles 32 and 226 of the Constitution of India to the Supreme Court and high courts, respectively, to issue directions or orders or writs, including writs of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari* provide a wider canvas to act in environmental matters. The writ remedy is efficacious and speedy. It takes

⁷⁴ Public Liability Insurance Act 1991, section 2 (b).

⁷⁵ Public Liability Insurance Rules, 1991, Rule 5 (1).

⁷⁶ The list of chemicals for which insurance has to be taken under this Act is given in Schedule 3, Part I and II of Manufacture, Storage and Import of Hazardous Chemicals Rules 1989.

lesser time than time required to obtain a decree in a suit.⁷⁷ The filing fee and expenses do not relate to advalorem court fees⁷⁸ paid in an ordinary civil suit. The affidavits of the parties are enough to proceed in a matter. It cuts the delay as also the inconveniences.

The writ is an extraordinary remedy, and the courts are reluctant to encourage petitioners who circumvent prescribed statutory procedure for correcting administrative action. This rule is waived by court in suitable cases, where, for instance, the impugned action violated the principles of natural justice, or where a government authority has exceeded its jurisdiction.

Proceedings under the Public Interest Litigation

During the last 15 years, an interesting development has taken place in the legal system of India. The cases related to environmental damages are brought before superior courts with relative ease in the form of Public Interest Litigation (PIL) based upon extremely liberal rules of *Locus Standi*. If the courts found themselves not equipped to deal with lengthy and technical questions of discovery and evidence, they appoint an expert committee to determine the questions of facts, to assess environmental damage, and to make recommendations as to remedial measures and restitution. The expert committees typically consist of both government and independent experts appointed by the courts, normally in consultation with the parties. The judges have normally restrained from considering the technical evidence in court, preferring on the whole to validate the committee's findings with a constitution order. Matters of a scientific nature are not made subject to adversarial testing. The use of expert committee allows the courts to import technical expertise while leaving judges free to consider the questions of law. The doctrine of *laches* is often relaxed in environmental actions brought in the public interest. The court is usually aware of the financial constraints and obstacles that environmentalists face in obtaining authentic information and documentation.

Proceedings before the National Environment Appellate Authority

The National Environment Appellate Authority was set up under the National Environment Appellate Authority Act, 1997, which received Presidential assent on 26th March 1997. The main object behind setting up of this authority is to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, shall or shall not be

⁷⁷ For example, in the Bombay High Court the delay in a writ petition is 6 years compared to over 15 years for a suit.

⁷⁸ Fees related to the value of suit.

carried out under the Environment (Protection) Act, 1986 and for matters connected there with or incidental thereto. Section 11(1) of the Act provides that any person aggrieved by an order granting “environmental clearance” in the areas in which industries, operations or processors shall not be carried out or shall be carried out subject to certain safeguards, may within 30 days appeal to the Authority mentioned above. It is presumed that the expression “environmental clearance” is intended to mean a clearance required by or under the Environment (Protection) Act, 1986. An appeal can be filed before the appellate Authority under sub-section (1) of section 11 of the National Appellate Tribunal Authority Act, 1997 by a person/appellant or his authorized representative.⁷⁹ A format for appeal is prescribed in Form-A specified in the rules. The Appeal shall contain the particulars required and shall be either in English or Hindi setting forth concisely and under distinct heads, the grounds of appeal to be numbered consecutively.⁸⁰

A Memorandum of appeal can be presented by the appellant in person or any one of the appellants/authorized representatives before the Registrar or designated officer. The mode of sending by registered post with endorsement of date of receipt is available for filing of appeal. Condonation of delay with the application and supporting affidavit is also provided for five sets of copies of appeal and documents are to be submitted for the Authority and one set of copies for each of the respondents. The competent authority, which passed the order appealed against, is impleaded as one of the respondents.⁸¹

The appellant or his representative are informed by the Registrar within 15 days of the receipt of the appeal for removal of defects, if any, which have to be rectified within 30 days. The appeal then is registered and numbered and intimation is given. Notices are then issued to every respondent. Default by the parties may result in dismissal of appeal or be decided *ex parte*. Similarly when the respondent or his representative does not appear at the hearing of the appeal, the appeal may be heard *ex parte* and decided finally.⁹⁵

The Authority shall dispose of the appeal provided that the authority may for reasons to be recorded in writing, extend it by a further period of thirty days - otherwise the unanimous view in the matters puts a seal to the final order. In case of difference of opinion amongst members on any point, the point shall be decided according to the opinion of the majority. The

⁷⁹ National Environment Appellate Authority Rules, Rule 2.

⁸⁰ *Id.*, Rules 4 & 5(a).

⁸¹ *Id.*, Rules 5(2) to (6).

chairperson of the Authority determines the finality in case of the division of opinion is equal. No order of the authority shall be questioned on the ground merely of the existence of any vacancy or defect in the constitution of the Authority or any defect in the appointment of a person acting as a member of the authority.⁹⁶ If at any stage of hearing of the appeal, the Authority considers that additional evidence needs to be taken by it for a proper disposal of the appeal, it can either take on record such evidence directly or obtain the same from the authority against the order of which the appeal is filed. When there are no specific rules governing the hearing of the appeal, Principles of Natural Justice have to be observed.

(g) Drafting The Agreements

None of the laws regulating environment in India provide for agreement in the sense of arbitration and conciliation agreements and the parties facing problems relating to or covered under the environment laws are free to directly proceed in the courts. Unlike, labour field where, there is scope of drafting the agreement between the employer and employee, in environment field, no such agreement can be contemplated between polluter and the general public.

(h) Relationship of the court system in terms of proceedings

One of the chief criticisms of the Water Act and Air Act has been its prohibition on the public from initiating litigation against polluters.⁸² Even the amendment carried out in 1988 to these Acts, allowed person to prosecute for water or air pollution only if he/she gives a prior notice of 60 days to the boards of his/her intention to institute a complaint before the judicial magistrate.⁸³

(i) Cost Owed By The Parties

In civil cases, parties are required to bear the cost of engaging lawyer and payment of stamp duty/ court fees. However, in a public interest litigation, no court fee or stamp duty is required to be paid. Likewise, in citizen's suit instituted under the Environment Protection Act, 1986 or in complaint against public nuisance, under the Code of Criminal Procedure, the parties are not required to pay any fees. In such cases, the public prosecutor (i.e., Government Advocate) acts

⁸² Water (Prevention and Control of Pollution) Act, section 49.

⁸³ *Id.*, section 49(1)(b).

on behalf of the complainant. The complainant is not required to bear any expenses in regard to the continuance of the proceedings.

(j) Time

Sections 91 to 95 of the Code of Civil Procedure, 1908, prescribe the procedure followed by the courts in civil suits brought for prevention and removal of public nuisance or for the issuance of the injunction. However, neither these sections nor anywhere else in the Code, any time limit is prescribed within which suit may be brought before the court or the court conducts the proceedings and passes the decree.

Sections 133 to 144 of the Code of Criminal Procedure, 1973 prescribes the procedure of filing of the complaint before the magistrate and the conduct of the proceedings. These sections, do not specify time limit within which magistrate has to dispose of the complaint. However, discretion is given to the magistrate to specify time limit in his order within which nuisance has to be removed by the accused party.

Similarly, under the Environment Protection Act, 1986, a duty is imposed on the general public to give 2 months' notice in advance to the Central Government before filing complaint in the court. But the Act is silent as to the time limit within which the court has to act on the complaint or proceedings are to be conducted in the court.

Articles 32 and 226 of the Constitution, most frequently resorted to by the general public in India either to file writ petitions or to institute public interest litigation, also does not mention time limit for the disposal of the case.

Under Water (Prevention & Control of Pollution) Act, 1974, section 28 of the Act, prescribes time limit of 30 days from the date of communication of the order, within which person aggrieved by the order of the state board, can file appeal before the appellate authority. But it is silent on the time limit within which appellate authority is to dispose of this appeal or conduct appellate proceedings. Same is the case with Air (Control & Prevention of Pollution) Act, 1981. However, the National Environment Appellate Authority Act, 1997, under section 11(4) and proviso thereto imposes duty on the National Environment Appellate Authority to dispose of the appeal within time period of 90 days from the date of filing the appeal and on sufficient reasons, this time period can be extended to further period of 30 days.

The Public Liability Insurance Act, 1991, under section 6 imposes duty to file application for claim for relief within 5 years of the occurrence of the accident. Section 7(7) imposes duty on the collector to dispose of the claim as expeditiously as possible and make endeavour to dispose of the claim within 3 month of the receipt of the application for relief.

(k) Statistical data

The status of court cases under Water Act and Air Act, up to the year – 2000, revealed that out of total number of 6811 cases instituted in the courts only 3310 (48.6%) were finally disposed of and the remaining 3501 (51.4%) were pending. This figure has slightly improved over a period of one year. As the table on page 22 reveals that out of total number of 6862 cases instituted in the courts 3484 (50.772%) have been finally disposed of and the remaining 3378 (49.227%) are pending.

The status of pending cases on environment as on year 1999 is given below:⁸⁴

Sl. No	Name of the State	Total No. of cases pending
1	ASSAM	
2	ARUNACHAL PRADESH	
3	ANDHRA PRADESH	2
4	BIHAR	212
5	GOA	
6	GUJARAT	1747
7	HARYANA	460
8	HIMACHAL PRADESH	35
9	JAMMU & KASHMIR	39
10	KERALA	4
11	KARNATAKA	85
12	MAHARASHTRA	120
13	MADHYA PRADESH	137
14	MEGHALAYA	

⁸⁴ *Pending Cases In Environmental Courts*, Government of India, Ministry of Environment & Forests, **Rajya Sabha Starred Question No 260** Answered on 12.03.1999, <http://164.100.24.219/rsq/quest.asp?qref=1406>

15	MANIPUR	
16	MIZORAM	
17	NAGALAND	
18	ORISSA	75
19	PUNJAB	296
20	RAJASTHAN	239
21	SIKKIM	
22-	TAMILNADU	140
2,3	TRIPURA	
24	UTTER PRADESH	57
25	WEST BENGAL ———	2
26	CHANDIGARH	
27	DELHI	1
28	ANDAMAN & NICOBAR	
29	DAMAN, DIU &DNH	
30	LAKSHADEEP	
31	PONDICHERY	
	TOTAL PENDING CASES	3651

Number of sanitation cases: The laws concerning environment do not give primitive power to local bodies to punish the offenders. The local bodies have to file complaints in the courts where the legal process is very slow for various reasons. The amount of fine that can be imposed is also very small. Thus, there is no fear of punishment. In Ahmedabad alone, in the year 1995, more than 1,50,000 cases were pending in courts for sanitation offences accumulated over a period of 10 years leaving no incentive for supervisors to file new cases.⁸⁵

Industrial Pollution Complaints: During the year 2001, Ministry received more than 300 complaints from various individuals/organizations/NGOs etc. regarding pollution being caused by certain industries. These complaints mostly related to air, water, land and noise pollution, resulting in degradation of the eco-system. Some of the complaints were also related to discharge

⁸⁵ P. U. Asnani, *Municipal Solid Waste Management In India*, Waste Management Workshop, 24-28 June 1996, Nicosia, Cyprus.

of untreated or partly treated effluent thereby contaminating water bodies, land and ground water.

⁸⁶

Performance of the Central Pollution Control Board & State Boards: Through its first ten years in operation, the Central Board's efforts at litigation were lethargic as it filed only 181 cases, and eventually dropped charges in 16 of those. For most of those years, only a few cases were filed annually. 104 cases were filed in 1986-87, marking a change in the Board's enforcement strategy.⁸⁷

By 1987-88, all the state boards had filed a total of only 1,602 cases for prosecution under the Water Act. Of these, 288 had been decided and 1,314 cases were pending.⁸⁸

As on 31.10.1997 the SPCBs/CPCB under the Water and Air Acts filed a total of 6624 cases. Out of these, 2947 were decided and 3677 cases were pending in various courts.⁸⁹ The number of cases, as on 30.9.2001 filed by CPCB/ SPCBs are given as below:

⁸⁶ MoEF Annual Report 2000-01.

⁸⁷ *Supra* note 15.

⁸⁸ Central Pollution Control Board, *Sixty First Report*, New Delhi, 1988

⁸⁹ MoEF Annual Report, 1997-98, See <http://envfor.nic.in/report/9798/legis.html>

**CENTRAL POLLUTION CONTROL BOARD
STATUS OF COURT CASES AS ON 30.9.2001**

S. No.	Name Of the Board	Cases filed Under Water Act	Cases filed under Air Act	Total Cases Under both acts	UNDER WATER ACT								UNDER AIR ACT								Total No. of decision under both Acts	Total No. of cases pending under both Act	Remarks /Inf. Received on
					No. of Decision	In Favour of the Board	Against the Board	Imprisonment	Fine	Restrain Order	No. of cases pending	No. of cases dismissed or withdrawn	No. of Decision	In Favour of the Board	Against the Board	Imprisonment	Fine	Restrain Order	No. of cases pending	No. of cases dismissed or withdrawn			
1	Assam	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	17.12.92
2	Arunachal Pradesh	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	26.09.01
3	A.P.	15	1	16	13	10	3	1	-	-	2	1	1	1	-	-	-	-	-	-	14	2	
4	Bihar	163	98	261	38	35	3	1 R. ON Prob.	-	7	125	3	3	-	3	-	-	-	95	-	41	220	17.10.01
5	Chattisgarh	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	I.N.A.
6	Goa	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	19.4.96
7	Gujrat	2407	340	2747	1051	163	888	5	12	146	1356	4	199	48	151	3	44	1	141	1	1250	1497	25.06.01
8	Haryana	447	271	718	213	181	32	9	-	2	234	149	45	45	-	18	-	-	226	25	258	460	19.5.95
9	H.P.	53	25	78	27	19	8	1	-	-	26	-	16	14	2	-	-	-	9	-	43	35	20.7.93
10	J& K *1	87	-	87	1	1	-	1	-	-	86	-	-	-	-	-	-	-	-	-	1	86	10.2.2 K
11	Kerala	68	3	71	60	49	11	2	4	30	8	13	3	3	-	-	1	-	-	2	63	8	1.3.01
12	Karnataka	144	71	215	76	43	33	-	-	22	68	-	23	13	10	-	2	5	48	-	99	116	5.1.2K
13	Maharashtra	358	148	506	244	125	119	46	-	-	114	-	142	113	29	-	112	1	6	-	386	120	2.2.98
14	M.P.	115	63	178	30	21	9	-	-	-	85	1	14	7	7	5	-	-	49	-	44	134	23.1.01
15	Meghalaya	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	13.2.01
16	Manipur	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	10.09.01
17	Mizoram	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	7.4.97
18	Nagaland	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	12.12.95
19	Orissa	97	33	130	35	31	4	1	1	4	62	26	12	10	2	-	-	-	21	10	47	83	2.7.01
20	Punjab	495	144	639	308	212	96	44	28	2	187	147	35	28	7	2	4	-	109	22	343	296	19.4.94
21	Rajasthan	235	69	304	63	27	36	-	-	-	172	-	2	2	-	1	-	-	67	-	65	239	7.12.92
22	Sikkim *2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	I.N.A.
23	TamilNadu	321	134	455	273	140	133	74	-	-	48	66	120	84	36	79	-	-	14	5	393	62	15.1.01
24	Tripura	2	2	4	-	-	-	-	-	-	2	-	-	-	-	-	-	-	2	-	-	4	31.1.01
25	U.P.	216	8	224	202	177	25	1	8	135	14	-	7	6	1	1	6	1	1	-	209	15	31.1.01
26	Uttanchal	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	I.N.A.

27	West Bengal *3	38	1	39	38	38	-	-	-	-	-	38	1	1	-	-	-	-	-	1	39	-	23.1.01
CASES FILED BY CPCB BEFORE DELEGATION																							
	Delhi	184	2	186	183	155	28	3	-	-	1	70	2	1	1	-	-	-	-	-	185	1	30.9.01
CASES FILED BY POLLUTION CONTROL COMMITTEES																							
1	Andaman & Nikobar	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	19.4.93
2	Daman, Dio & Dnh	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	19.2.01
3		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	05.2.01
4	Delhi	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	INA.
5	Chandigarh	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	23.2.2 K
6	Pondicheri	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	13.4.98
	Grand Total	5445	1413	6858	2855	1427	1428	189	53	348	2590	518	625	376	249	109	169	8	788	66	3480	3378	

Note *1: In the State of J & K, 86 cases have been shown as pending under both the Acts as composite complaint have been preferred. One case has been shown as conviction.

Note *2: INA stands for information not available.

Note *3: Cases shown as withdrawn because Pollution Control system has been installed or the cause of pollution is eradicated and the purpose of Acts achieved. Therefore, case withdrawn taken as in favour of the Board.

4. Institutional Routes from the Outbreak to the resolution of disputes

The procedural options available under the various statutory provisions relating to environmental litigation can be described as falling under the category of civil proceedings, criminal proceedings, constitutional remedies and administrative measures, as discussed below.

(1) *Civil Suits*: Common law remedies of nuisance, negligence and strict liability are available to a plaintiff in a tort action. These can be enforced by instituting an action in subordinate civil judiciary. An action may be brought by suing for damages or an injunction, or both. Damages awarded may be “substantial” or “exemplary”. The former is awarded to compensate the plaintiff in order to restore him to a position in which one would have been in, had no wrong been committed. The quantum of damages correspond to a fair and reasonable compensation for the injury caused. Exemplary damages are punitive in nature to mend an outrageous nature of conduct, as for instance, persistent causing of nuisance after being convicted and being fined for if the wrong is repeated.⁹⁰

Tort actions in India have been few wherein the damages awarded have been quite low which pose no deterrence to a polluter.

Although in theory damages are the principal relief in tort action yet, injunctive reliefs prove more efficacious in abating pollution.⁹¹ A perpetual injunction permanently restrains the defendant from doing the act complained of. It is granted at the court's discretion after judging the merits of the suit. A perpetual injunction is intended to protect the plaintiff indefinitely to put into check successive actions in respect of every infringement and avoid multiplicity of proceedings. Perpetual injunctions are regulated by sections 37 to 42 of the Specific Reliefs Act of 1963.

(ii) *Criminal Complaints*: Section 268 of the Indian Penal Code of 1860 provides penal consequences for public nuisance. Section 133 to 144 of the Code of Criminal Procedure of 1973, provide independent, speedy and summary remedy against public nuisance.⁹² Section 133

⁹⁰ *J. C. Gulstan v. Dunia Lal Seal*, (1905) 9 CW N 612 at 616.

⁹¹ Armin Rosencranz, *Environmental Law and Policy in India* Chapter 10 & 11 (1991).

⁹² A magistrate has not jurisdiction under S. 133 to entertain private disputes between neighbour. For example, a flour mill that only disturbed a neighbouring family but no other residents in locality, constituted a *private* nuisance actionable in tort and not a *public* nuisance; *Dhaseppa Ballapa Goudej v. Sub Divisional Magistrate* 1984 (2) Ker. L. J. 444, at 449 -450.

empowers a magistrate to pass a “conditional order” for the removal of a public nuisance within a fixed period of time.⁹³ The magistrate may act on information received from a police report or any other source including a complaint made by a citizen.⁹⁴ The magistrate's power to issue a conditional order under section 133 has now been interpreted to be mandatory⁹⁵ in nature. Once a magistrate has before him evidence of a public nuisance, he must order removal of the nuisance within a fixed time.⁹⁶

(iii) *Writ Petitions to the Supreme Court of India and to the high courts:* The extra ordinary jurisdiction under Articles 32 and 226 of the Constitution of India to the Supreme Court and high courts respectively, to issue directions or orders or writs, including writs of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari* provide a wider canvas to act in environmental matters. The writ remedy is efficacious and speedy. It takes lesser time than that required to obtain a decree in a suit,⁹⁷ The filing fee and expenses do not relate to *ad valorem* court fees⁹⁸ paid in an ordinary civil suit. The affidavits of the parties are enough to proceed in a matter. It cuts the delay as also the inconveniences.

(iv) *Citizens Suit Provision:* Under section 19 of the Environment (Protection) Act 1986, a citizen may prosecute an offender before a magistrate. Prior to prosecuting, however, he or she must give the government 60 days notice of his or her intention to prosecute. This notice is intended to alert the government to the offence so that it may itself take appropriate remedial action. Likewise, the citizen participation in the enforcement of pollution laws are now found in section 43 of the Air Act as amended in 1987 and in section 49 of the Water Act as amended in 1988.

(v) *Public Interest Litigation:* Public interest litigation has a major thrust in the field of environmental protection in India. Most of the cases in India arose due to PIL initiated by public-spirited citizens⁹⁹ or public interest groups.¹⁰⁰

⁹³ The order is conditional because it is only preliminary order. The order may be made absolute (final) only after giving the appoint party sufficient opportunity to be heard.

⁹⁴ For example, in *K. Ramachander Mayya v. District Magistrate*, 1985 (2) Ker L. J. 2899 the H.C. approved of the magistrate's order shutting down a stone quarry, where the magistrate acted on complaints from neighbouring residents that the blasting of rocks at the quarry caused damage from flying stone chips.

⁹⁵ *Municipal Council Ratlam v. Vardhichand*, AIR 1986 SC 1622.

⁹⁶ In urgent cases, a magistrate may direct the *immediate* removal of a nuisance. *Supra* note 29 at 295. Also see Section 145 of Cr. P. C. of 1973.

⁹⁷ For example, in the Bombay High Court the delay in a writ petition is 6 years compared to over 15 years for a suit.

⁹⁸ Fees related to the value of suit.

⁹⁹ AIR 1987 SC 982; AIR 1988 SC 1037; AIR 1987 SC 1115; AIR 1987 SC 1086.

(vi) *Collector Under Public Liability Insurance Act*: The Public Liability Insurance Act authorizes the collector having the jurisdiction over the area in which the accident occurs to grant compensation.¹⁰¹ The collector is empowered under the Act to follow such summary procedure for conduct in an enquiry on an application for relief under the Act as he thinks fit.¹⁰² Under rule 5 (2) of Public Liability of Insurance Rules, the collector has all the powers of a civil court for the purposes of summoning and enforcing the attendance of any person and examining him on oath, and requiring the discovery and production of documents besides receiving evidence on affidavits. An appeal against the award of the collector has not been provided for. However, if a victim feels he is entitled to larger compensation, he/she is free to initiate action in time in a proper forum. In any case, the writ jurisdiction of the high court is always possible.¹⁰³

(vii) *National Environment Appellate Authority*: This authority is empowered to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processors shall not be / shall be carried out subject to certain under the Environment (Protection) Act, 1986 and for matters connected therewith or incidental thereto. The National Appellate Authority shall, after giving an opportunity of being heard, dispose off the case within a period of ninety days from filing and can be further extended thirty days more. The authority has power to regulate its own procedure including the fixing of places and times of its enquiry. The chairperson shall exercise such financial and administrative powers as may be vested in him under the Rules. He may delegate powers to vice-chairperson or any other officer subject to the control and supervision of the chairperson. The exclusion of civil court jurisdiction to entertain any appeal in respect of any matter with which National Appellate Authority is empowered under this Act is expressly laid down. The penal provision for noncompliance of the order made by the Authority is severe. It may either be in the form of imprisonment up to 7 years or in fine up to 0.1 million rupees or both.¹⁰⁴

¹⁰⁰ AIR 1985 SC 652.

¹⁰¹ Public Liability Insurance Act 1991, section 2 (b).

¹⁰² Public Liability Insurance Rules, 1991, Rule 5 (1).

¹⁰³ K. Srinivasan, *Handbook on Public Liability Insurance*, Chapter 3, 12 (1992).

¹⁰⁴ S.O. 775 (E) 11.11.1997 II 3 (ii) Extra *Sl.* 629.

5. Choices of Routes for Dispute Resolution

In order to sue in Indian courts, the injured person must first be able to afford an attorney. In this country, a lawyer may charge a contingent fee; that is, taking a portion of the recovery as a fee rather than payment upfront. Furthermore, in India, a person must pay a percentage of the claimed recovery into court before bringing a suit.¹⁰⁵

It has been observed that the cases filed before the courts, which are not inferior to that of Metropolitan Magistrate or Judicial Magistrate First Class,¹⁰⁶ could not be taken up for hearing at least for 3 years on account of pendency of earlier cases. The cases are to be filed before the various courts throughout the area under the jurisdiction of the Regional officer/Sub-Regional officer and therefore, they have to attend various courts at remote places at *Taluka* level and therefore it becomes very difficult for the officers of the Board (complainant) to pursue the cases at such places and attend day to day hearing. It has also been observed that after 3 to 5 years, when cases are matured for hearing, in most of cases, the management has changed and the respective accused persons have left their jobs and have joined some other organization, without giving details of their jobs to the earlier company or Pollution Control Board. In some cases, the persons in charge are even found to have left the state/country, wherein, it is not possible to procure their attendance for years together. In such cases either for want of service or procurement of attendance of such accused persons, the court has either discharged the accused or stayed the prosecution indefinitely. It has also been observed that after every 3 years, the concerned officers/complainants and witnesses are transferred and therefore, it becomes very difficult to procure attendance of such transferred persons from another region. The transfer of judges also hampers the progress of cases. Since, all the cases are warrant trials, it requires elaborate recording of evidence before change and after change. The accused prefers appeal/revision even against not only issue of process, but also against framing of charges, convictions etc. and therefore, the decisions are delayed. Since, punishment involved is minimum 18 months imprisonment and fine and a maximum 6 years of imprisonment, the courts insists on detailed procedure as well as substantial evidence. Because of technical nature of

¹⁰⁵ <http://www.landskroner.com/bhopal-lhz.html>

¹⁰⁶ *Supra* Chapter 1.

offences under the above Environmental Laws, it becomes very difficult for the local advocates to acquaint themselves with the evidence and likewise to apprise the judge with the evidence.¹⁰⁷

Despite the regulatory framework and oversight authority of the Central and state boards, enforcement is remarkably lax. Boards have been historically lenient towards the discharge of polluting effluents by allowing industries to procure the "consent" required by the Water Act. When violations have become too obvious to ignore, the Central Board has moved sporadically, often lethargically, to launch prosecutions. State boards have also been lax. From 1974, when the Water Act became law, till 1988, state boards started only 1,600 prosecutions. Responsibility for failing to successfully prosecute polluting industries falls squarely on the boards.

The SPCBs, do not have the power to impose on-the-spot-fines on persistently non-complying units. In the absence of such power, the State Boards either hope for the non-complying unit to abide by their directions or file a case with the Court of Justice against the said unit and wait for the court verdict. The Court is entitled to impose stringent punishments ranging from imprisonment of 18 months to 6 years plus fine. Courts are generally busy with day-today criminal and civil cases and that leads to environmental cases, pending for years together. The pendency problem is particularly alarming in states like Madhya Pradesh, Orissa, Gujarat, Punjab and Assam.

The growing disillusionment with the efficacy of litigation as a control mechanism felt by some of the State Boards, especially those of Madhya Pradesh, Tamil Nadu, Punjab, Orissa and Gujarat is evidenced by the negligible number of environmental cases (compared with the preceding years) filed by them during 1997-98:¹⁰⁸

State	Year of constitution	No. of cases filed upto 31.3.98	No. of cases disposed upto 31.3.98	No. of cases pending as % of cases filed	No. of cases filed in 1997-98	No. of cases disposed in 1997-98
Andhra Pradesh	1976	156	120	23.08	48	29
Assam	1975	5	0	100	1	0
Gujarat	1974	2961	1181	60.11	20	76
Karnataka	1974	158	95	39.87	17	7
Kerala	1974	66	63	4.55	0	0
Maharashtra	1970	524	389	25.76	38	15

¹⁰⁷ *Supra* note 11.

¹⁰⁸ Information collected from Central Pollution Control Board in 1998.

MP	1974	164	38	76.83	3	8
Orissa	1982	109	11	89.91	6	0
Punjab	1975	848	482	43.16	1	26
Tamil Nadu	1982	454	299	34.14	0	9
UP	1975	444	329	25.9	24	39

Some State Boards complain that when the cases are finally decided, the verdicts often go against them, for the courts are reluctant to punish the recalcitrant units. The pollution control Acts (Water, Air Acts, Noise pollution regulations, etc.) do not provide for the constitution of special courts to try environmental cases. No jail sentences, on record, have been meted out, and fines imposed are of not such nature as to deter accused - polluter.¹⁰⁹

And finally, the significant drawback of current environmental laws is language that puts the burden of proof on the pollution control boards, rather than the polluters. The Water Act states that to enact punitive measures, the pollution of a water body must be done "knowingly" rather than "negligently".

To provide a context for the behavior of the central and state pollution control efforts, some have argued a possible explanation as the general philosophy of an environmental agency within a developing country.

Public activism is also worth noting. Public protests have concentrated on two subjects: the local industry whose pollution has affected nearby residents; and deforestation by the lumber industry. Interestingly, the genesis of most demonstrations have come from rural residents. One observation which can be drawn from the public awareness burgeoning throughout the 1970's and 1980's is that the public perceived the government, not as stewards, protecting the environment, but as allies of industry's interests. The results were often public demonstrations against state and central government officials.¹¹⁰

In the matters of environment, Indians show immense faith in the Apex Court, whose judicial activism in this field is quite well known. The courts in India by their beneficial interpretations have given citizens fundamental right to clean & pollution free environment. This has resulted in shooting up of environmental legal action. Also, relaxing the general rule of *locus standi*, has further given impetus to litigants. They are encouraged and bring before the court all kinds of

¹⁰⁹ Source: Pollution Control Board, survey of cases from 1976- 2001.

¹¹⁰ *Supra* note 15.

environmental violations to the notice of the court, even by simple letter addressed to it. This over-excitement over the environment cause has, however, overburdened the judiciary.

6. Case Study

During the 1980's, public sentiment, and critically, the Indian Supreme Court, took an increasingly sympathetic stance toward environmental security. The outcome was a series of important PIL decisions. The Union Carbide disaster in Bhopal notwithstanding, the *Doon Valley Case*¹¹¹ marked a clear watershed. The court ordered the closure of eight sizable limestone quarries because the facilities had adversely affected local water springs and the health of nearby residents.

In the *Delhi Gas Leakage Case*¹¹², the court took an unusual step by taking an active role in the environmental debate by suggesting the set up of **Environmental Courts**.

The Court in the *Ganga Pollution Case*,¹¹³ ordered the closure of a cluster of tanneries, till they established primary treatment facilities within a few months

*Narayan Sarover Case*¹¹⁴: was filed to prevent the destruction of the sole habitat of the Chinkara and one of the last remaining mangrove wetlands on the western coast from mining, factories, thermal power stations, jetties, groundwater pollution from salinization due to mining, to stop the process of desertification of western India. Historic judgment delivered wherein the court order squashed two notifications restoring the area of the sanctuary to its pristine glory. The court has taken away the power of the state government to denotify a protected area. The court also upheld the 1991 amendment of the Wildlife (Protection) Act, 1972.

*Church of God (Full Gospel) in India v K K R Majestic Colony Welfare Association*¹¹⁵ In this case, related to noise pollution, peculiar question came up before the Supreme Court of India, demanding its decision on the question whether a particular community can claim right to add to noise pollution on the ground of religion? Whether beating of drums or reciting of prayers by use

¹¹¹ *Rural litigation & entitlement Kendra v Union of India*, AIR 1985 SC 652

¹¹² *M.C.Mehta v. Union of India*, AIR 1987 SC 1086

¹¹³ *M.C.Mehta v. Union of India*, AIR 1988 SC 1037

¹¹⁴ *Consumer Education-Research Society v. Union of India*, (2000) 2 SCC 599.

¹¹⁵ Criminal Appeal No. 732 of 2000 Decided on 30th August, 2000

of microphones and loudspeakers so as to disturb the peace or tranquility of neighborhood should be permitted? The court did balancing act between two fundamental rights guaranteed under the Constitution of India one upholding religious right and other recognizing right to stay in pollution free environment flowing from right to life guaranteed under Article 21 of the Constitution. The Court held that in a civilized society in the name of religion, activities which disturb old or infirm persons, students or children having their sleep in the early hours or during day-time or other persons carrying on other activities cannot be permitted. The court in strongest terms came to the rescue of victims of noise pollution and recognized their right over the religious rights.

The existing environmental laws do not create alternative forums for dispute resolution or the redress of public grievances. Though the provision for setting up of special environment tribunals have been made under the National Environment Tribunal Act, 1995, it is yet to be set up for resolving environmental disputes. Hence, the cases are mostly resolved by the Supreme Court of India and the high courts in exercise of their writ jurisdiction. Some of these cases pertaining to air, water and noise pollution are mentioned below:

Air Pollution

In *A P Pollution Control Board II v. Prof. M V Nayudu(Retd.)*¹¹⁶, the Supreme Court has observed that no objection certificate should not have been granted by Andhra Pradesh Pollution Control Board in case of the storage of serious hazardous materials under the Environment Protection Act, 1986. On 7th December 2000, the Supreme Court ordered for closure of all the polluting units in non-conforming / residential areas.

In *M.C. Mehta v. Union of India*¹¹⁷ the Supreme Court directed the closure of 168 hazardous industries in Delhi with effect from November 30, 1996. The Court, however, permitted these industries to relocate or shift themselves to any other industrial estate in the National Capital Region. In a subsequent order, in *M.C. Mehta v. Union of India*¹¹⁸ the Supreme Court brought 513 more industries under hazardous category and ordered for the stoppage of their functioning in Delhi with effect from January 31, 1997.

Conversion of buses into CNG mode – The Supreme Court on 28.7.98 gave direction for conversion of all the buses to CNG mode by 31.3.2001 in the National Capital Region of Delhi.

¹¹⁶ 2000 (8) SCALE 23.

¹¹⁷ 1996(5) SCALE 21

¹¹⁸ 2000(8) SCALE 386

A three judge bench¹¹⁹ of the Supreme Court in *M.C. Mehta v. Union of India*¹²⁰ while implementing these directions given earlier remarked that neither the Government authorities nor private bus operators acted seriously in taking steps for complying with the aforesaid directions. The court, taking into consideration the plea by the State Government, bus operators and most importantly the problems being faced by the common public (including school children), granted conditional extension and directed the owners of the commercial vehicles (including autos), who have placed firm orders for new CNG vehicles or for conversion to CNG mode to furnish affidavits by 31st March, 2001 about their existing vehicles, and the details of order placed by them for new CNG vehicles or for conversion to CNG mode. On these affidavits being filed, they were permitted to operate provided the vehicle was not more than eight years old, on 30th September, 2001. The court ruled out that after 1st April, 2001, no commercial vehicle would be registered in Delhi which does not conform to the Court's order dated 28.7.1998. It directed the *Bhure Lal* Committee to examine the treating of usage of low sulphur diesel as clean fuel for granting exemption by inviting comments.¹²¹

In *Animal Feeds Dairies and Chemicals Ltd. v Orissa State Pollution Control Board*¹²² the petitioner challenged the direction issued by the Orissa State Pollution Control Board under section 31A of the Air Act, 1981, requiring them to close down the industry and shift it to a new location, on account of air pollution. The court held that Air Pollution as defined under the Air Act, 1981 means the presence of any air pollutant in the atmosphere. Possibility of emission of foul odour would not clothe the jurisdiction with the Board to issue any direction

Water Pollution

In *Mandu Distilleries Pvt. Ltd. v M.P. Pradushan Niwaran Mandal*¹²³ the petitioners filed writ petition challenging the order passed by the respondent – Madhya Pradesh State Pollution Control Board, directing stoppage of production. The petitioners had constructed lagooning system of effluent treatment plant along with the distillery. The respondent issued show cause notice objecting to discharge of polluted water in Pankhedi Nala reaching rivers Mohini, Chambal, etc. the notice was replied. The Government of India, through respondent Board required setting up of Anaerobic Methane Gas Disaster Plant. Construction of the same was started but delay was

¹¹⁹ comprising Dr. A.S. Anand CJI, B.N. Kirpal and V.N. Khare, JJ.

¹²⁰ JT 2001 (4) 201.

¹²¹ *M.C. Mehta v. Union of India* JT 2001 (4) 201.

¹²² AIR 1995 ORI 84

¹²³ AIR 1995 M.P. 57

caused due to cancellation of the permission. The respondent Board passed an adverse order. The same was challenged before the high court. The high court of Madhya Pradesh held that:

“The Water Act, 1974, a beneficial legislation permits preventive measures in case of industries to be established and remedial measures in case of industries already established. The focus has to be on the remedial measures. The state board has onerous task to perform and should be left little free where problem threatens the very existence of mankind. However, some basic requirements of natural justice has to be fulfilled, viz., the person accused should know the nature of the accusation made, he should be given an opportunity to state his case, and the Board should act in good faith.”

In this case, the court directed that the Respondent – Board should issue fresh show cause notice stating all grounds specifically, like absence of consent or renewal, limit of production types of pollution controls, objectionable discharge of effluents, etc., and remedial measures necessary to incinerate pollution and shall give reasonable opportunity to them to represent their cases and then decide the question afresh within a period of 35 days. The petitioners till then, shall remain restrained from discharging trade effluents through any stream channel or other source reaching rivers Mohini, Chambal, etc.

In *M.C. Mehta v. Kamal Nath & Others*¹²⁴ -the Court took notice of an article which appeared in the newspaper – the Indian Express stating that a private company "Span Motels Pvt. Ltd.", to which the family of Kamal Nath, a former Minister of Environment and Forests, had a direct link, had built a motel on the bank of the River Beas on land leased by the Indian Government in 1981. Span Motels had also encroached upon an additional area of land adjoining this leasehold area, and this area was later leased out to Span Motels when Kamal Nath was Minister in 1994. The motel used earthmovers and bulldozers to turn the course of the River Beas, create a new channel and divert the river's flow. The course of the river was diverted to save the motel from future floods. The Supreme Court of India held:

- (a) prior approval for the additional leasehold land, given in 1994, is quashed
- (b) the Government shall take over the area and restore it to its original condition.
- (c) Span Motels will pay compensation to restore the environment,
- (d) the various constructions on the bank of the River Beas must be removed and reversed.

¹²⁴ (1997)1 Supreme Court Cases 388

- (e) Span motels must show why a pollution fine should not be imposed, pursuant to the polluter pays principle.
- (f) Regarding the land covered by the 1981 lease, Span Motels shall construct a boundary wall around the area covered by this lease, and Span Motels shall not encroach upon any part of the river basin. In addition, this motel shall not discharge untreated effluents into the river.

In *Attakoya Thangal v. Union of India*¹²⁵, a public interest litigation challenging the environmental imbalance likely to be caused by the implementation of the new water scheme in Lakshadweep Islets, the Kerala High Court said:

"Right to life is much more than the right to animal existence and its attributes are manifold, as life itself. A prioritisation of human needs and a new value system has been recognised in these areas. The right to sweet water and the right to free air are the attributes of the right to life. These are the basic elements which sustain life itself."

Noise Pollution

In *Rabin Mukherjee v State of West Bengal*¹²⁶ - a writ application was moved by the petitioners for protection of their own rights and also in public interest being aggrieved by the nuisance and noise pollution which are being created in the impunity by the transport operators by indiscriminate installation and use of electric and artificially generated air horns. They prayed for a writ in the nature of *mandamus* commanding the respondents to enforce the provisions of Rule 114 of the Bengal Motor Vehicles Rules, 1940 and to enforce the restrictions against the use of such horns. The Calcutta High Court allowed the application and directed the respondents to enforce strictly the provisions of Rule 114(d). the court directed the State Government to issue notice and or notifications immediately notifying to all the transport vehicle operators about the restrictions provided in section 114(d) and directing them to remove the electric, air and other loud and shrill horn forthwith and to use only bulb horn, giving the operators 15 days time to change the horn, with the warning that failure to change the horn would attract penal action.

In *Radhey Shyam v Gur Prasad Serma*¹²⁷ the plaintiffs filed a suit for permanent injunction restraining the defendant from installing and running flour mill in the premises occupied by the

¹²⁵ 1990 (1) KLT 580.

¹²⁶ AIR 1985 CAL 222

¹²⁷ AIR 1978 ALL 86

defendant. The residential portion of the plaintiff was just above the shop wherein impugned machine is installed. The trial court found that the running of flour mill was not an actionable nuisance and against this decision, the plaintiff filed civil appeal. The appellate court found that if palm of the hand was placed on the walls of plaintiff's room, vibrations could be noticed because of running of the oil expeller machine. Also, there was monotonous and continuous feeling of slight tremor or 'zoom' sound because of the running of the machine. It was contended by the defendant that there are two other flour mills in the area, and a flour mill is situated in the same premises. Thus, the plaintiff who is a tenant in the premises in question has to put with certain amount of noise which is caused by the running of oil machine. The Allahabad High Court found that there was no residential portion over those flour mills and observed that the principles relating to private nuisance are by now well settled. The court observed:

"It is manifest that a person can claim injunction to stop nuisance if in a noisy locality there is substantial addition to the noise by introducing of some machine, instrument or performance at defendant's premises which materially affects the physical comforts of the occupants of the plaintiff's house. The running of impugned machine would seriously interfere with the physical comfort of the plaintiff and therefore, he is entitled to the injunction as claimed by him.

From the above case study, it is clear that the notions of supreme authority of the courts make parties reluctant to submit to the alternative dispute resolution forums, which may or may not conclude matters deemed by the litigants to be of paramount interest to them in their favor.